

STATE OF MICHIGAN
COURT OF APPEALS

MARY ELIZABETH DEWITT HESSEN,

Plaintiff-Appellee,

v

MICHAEL LOUIS HESSEN,

Defendant-Appellant.

UNPUBLISHED

June 30, 2011

No. 297631

Oakland Circuit Court

LC No. 2008-753000-DM

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right the trial court's postjudgment order awarding plaintiff attorney fees and costs in the amount of \$4,100. We affirm.

Defendant argues that the trial court lacked the authority to enter the order awarding plaintiff attorney fees and costs. Defendant is mistaken. The court's authority to enter the order flows both from its statutory and inherent authority to enforce its own judgments and directives. MCL 600.611; *Schaeffer v Schaeffer*, 106 Mich App 452, 457-458; 308 NW2d 226 (1981).

Next, defendant argues that the trial court abused its discretion by awarding plaintiff attorney fees and costs. We disagree. In a divorce action, we review a trial court's decision to award attorney fees for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003). "An abuse of discretion occurs when a court selects an outcome that is not within the range of reasonable and principled outcomes." *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). We "review the trial court's factual findings for clear error." *Brandt v Brandt*, 250 Mich App 68, 72; 645 NW2d 327 (2002). There is clear error where there is no evidentiary support for the factual findings or where there is supporting evidence but we are nevertheless left with a definite and firm conviction that the trial court made a mistake. *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007). We "afford[] great deference to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Lumley v Bd of Regents for Univ of Mich*, 215 Mich App 125, 135; 544 NW2d 692 (1996).

"Under the 'American Rule,' attorney fees are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, common-law exception, or contract. In domestic relations cases, attorney fees are authorized by both statute, MCL 552.13, and court rule, MCR 3.206(C)." *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005) (citation

omitted). Attorney fees may be awarded if a party “alleges facts sufficient to show that the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.” MCR 3.206(C)(2)(b). Additionally, attorney fees are “authorized when the party requesting payment of the fees has been forced to incur them as a result of the other party’s unreasonable conduct in the course of litigation.” *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992); *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992). “[T]he attorney fees awarded must have been incurred because of misconduct.” *Reed*, 265 Mich App at 165. “The party requesting the attorney fees has the burden of showing facts sufficient to justify the award.” *Woodington v Shokoohi*, 288 Mich App 352, 370; 792 NW2d 63 (2010).

The trial court awarded plaintiff attorney fees and costs based on defendant’s conduct in causing “significant and unreasonable delays” after the consent judgment of divorce was entered. Defendant failed to comply with the judgment deadline for removing his personal property from the marital home. Although defendant was unable to remove certain items of personal property from the marital home that had not yet been divided, he failed to remove within the deadline the personal belongings that were separate from the property yet to be divided. Further, the e-mail correspondence between the parties shows that defendant’s lack of cooperation directly contributed to his inability to comply with the judgment and resulted in unwarranted delays. There is also evidence that defendant caused delays in delivering savings bonds and executing the documents necessary for the entry of a qualified domestic relations order. From this evidence, the trial court found that there had been actual delays that were both significant and unnecessary. See contra, *Reed*, 265 Mich App at 165. The trial court reviewed plaintiff’s attorney’s billing statement and based the award on the attorney fees and costs that plaintiff incurred directly because of defendant’s unreasonable conduct. See *id.* The trial court’s finding of unreasonable and dilatory conduct was not clearly erroneous. Accordingly, we find the trial court did not abuse its discretion by awarding plaintiff attorney fees and costs under such circumstances.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering